

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 498 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHARIF CHAKU SANDHI

Versus

SUB-DIVISIONAL MAGISTRATE

Appearance:

MR NM KAPADIA for Petitioner
Mr.P.S.Champaneri, A.G.P.respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 12/04/96

ORAL JUDGEMENT

The petitioner by this petition under articles 226 and 227 of the Constitution of India has challenged the legality, propriety and validity of the order of externment passed by the Sub-Divisional Magistrate, Gondal on 7.10.95 in Externment Case No. 16/95 confirmed in appeal by the State Government by its judgment and order dated 29.12.95. The petitioner came to be served

with the notice under section 56(a) and (b) of the Bombay Police Act on 20.4.95. By the said notice the petitioner was called upon to explain why an order of externment be not passed against him on the allegations stated herein. That there are as many as 3 criminal cases registered against him and there are as many as 5 persons who had deposed against his high handedness and criminal activities. After considering the explanation advanced and reading necessary instances, the authority passed an order of externment.

2. Said order of externment confirmed in appeal is challenged on various grounds, one of which is as under:

"That the exterring authority has taken into consideration extraneous material which was not a part of the show cause notice and that the externee was not offered any opportunity to explain the same and therefore, it is a vitiated order of externrment and the order of externment is liable to be quashed."

3. Mr. Kapadia the learned advocate for the petitioner referred to the order of externment dated 7.10.95. After referring the table of cases against the petitioner, the authority has stated that the petitioner is a head strong person. Further the petitioner is not doing any lawful business and is doing clandestine anti-social activity of illicit liquor and gambling and gets financial benefits. According to Mr. Kapadia, the learned advocate for the petitioner, this anti social activity of gambling and illicit liquor has not been part of the show cause notice and, therefore, the petitioner could not advance any explanation in particular denial of the activities. I have perused the whole of the show cause notice wherein no such allegation against the externee is made. He therefore, contended that the order is based on extraneous material and therefore, the order is vitiated.

4. Mr. Champaneri, learned A.G.P. states that the authority has not referred to these allegations in the show cause notice nor any opportunity was given to the externee to meet with the same. There is no material even to substantiate the said allegation. Therefore, these are extraneous materials which are taken into consideration by the authority for which no opportunity was given to the externee.

5. When an material for passing the order of externment is relied upon and no opportunity to meet with

the same has been afforded to the externee, the order of externment based on such extraneous material is bad, firstly, because no principle of natural justice is followed and secondly that the same is without affording any opportunity to the externee. In view of this fact when the order is vitiated for non compliance of principles of onatural justice, the order is liable to be quashed and set aside.

6. A question may arise whether this contention can be raised in this petition or not, particularly, when the same is not raised in appeal which is a statutory right of the externee. As the question goes to the root of the proceedings, it should not matter whether the same is raised in appeal or not.

6. In view of the above fact, the petition is liable to be allowed and the same is hereby allowed. The order of externment dated 7.10.95 confirmed in appeal by order dated 29.12.95 is hereby quashed and set aside. Rule made asbolute. No order as to costs.

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